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Department of Labor Extends and Expands COVID-19 Regulatory Relief for Employee Benefit Plans

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In May 2020, the Department of Labor jointly with the Department of Treasury and the Internal Revenue Service (the "Agencies") released guidance delaying and extending many common deadlines for employee benefit plans. In EBSA Disaster Relief Notice 2020-01, the DOL extended deadlines and provided other relief for employee benefit plans subject to Title I of ERISA. Further, the DOL and the Department of the Treasury issued a joint notice published in the May 4, 2020 Federal Register extending certain deadlines for group health plans and deadlines relating to claims and appeals for all plans (collectively, the "2020 Notices").

2020 Notices

The relief provided pursuant to the 2020 Notices began on March 1, 2020 and continues until 60 days after the announced end of the COVID-19 National Emergency (or such other date announced by the Agencies in future guidance). However, ERISA Section 518 and IRC Section 7508A (the laws which allow the extension of deadlines in this situation) provide that the available relief is expressly limited by statute to a period of one year. One year from March 1, 2020 is February 28, 2021. Since the issuance of the 2020 Notices, plan sponsors and administrators have thought that the one-year delay applies to the global extension of deadlines authorized under the 2020 Notices – meaning that the delay should end on February 28, 2021 for all plan participants. However, in guidance just released the DOL indicates that such thinking is incorrect.

2021 Notice

In EBSA Disaster Relief Notice 2021-1, the DOL provides that both individuals and plans will have the applicable period under the 2020 Notices disregarded until the earlier of – one year from the date they were first eligible for relief, or 60 days after the end of the National Emergency. In other words, the one-year statutory delay is applied to each action or event required or permitted to be taken by an individual or by a plan. For example, if a qualified beneficiary's COBRA premiums for February 2020 were originally due on March 2, 2020, this means that such month's premiums are now due on March 2, 2021. Further, March 2020 premiums originally due on March 30, 2020 are now due on March 30, 2021. The 2021 Notice also states that the relief continues until sixty days after the announced end of the National Emergency (which is still ongoing) or such other date announced by the Agencies. This is an important distinction, because covered actions which are permitted or required after February 28, 2021 are now subject to the relief. However, once the relief / delay begins, it will end no later than one-year thereafter or 60 days after the end of the National Emergency (whichever is earlier).

Health and Welfare Plan Actions Subject to the Relief

The 2020 Notices and the 2021 Notice apply to the following events under a health and welfare plan –

- The 30-day (or 60-day) period to request special enrollment under HIPAA;
- The deadline for providing a COBRA election notice to qualified beneficiaries;
- The 60-day period to elect COBRA continuation coverage;
- The date for making premium payments for COBRA continuation coverage (both initial and monthly payments);
- The date by which a qualified beneficiary must notify the plan of a qualifying event or a determination of disability for purposes of COBRA continuation coverage;
- The date by which an individual may file a benefit claim or an appeal of an adverse benefit determination under the plan's claims procedures (including run-out claim periods under health FSAs and HRAs); and
- The deadline for a participant to file a request for external review with a plan that uses the Federal external review process and to submit information to perfect such a request.

Relief Affecting Retirement Plans

The 2020 Notices and 2021 Notice may also apply to certain actions under retirement plans, including loan and distribution verification procedures, participant contributions and loan repayments, and blackout notices. However, the relief for these actions requires plan fiduciaries to take steps to correct any failure as soon as reasonable practicable. Last, the 2021 Notice also applies to the date by which an individual may file a benefit claim or an appeal of an adverse benefit determination under a retirement plan's claims procedures.

Participant and Beneficiary Communications

The 2021 Notice also addresses participant and beneficiary communications. The 2021 Notice stops short of mandating any specific communication. However, it reminds plan fiduciaries of their obligation to act reasonably, prudently and in the interest of employees and their families who rely on plan coverage for their physical and economic well-being. According to the 2021 Notice, this means, for example, that where a plan fiduciary knows, or should reasonably know, that the end of the relief period for an individual action is exposing a participant or beneficiary to the risk of losing protections, benefits or rights under a plan, the fiduciary should consider affirmatively sending a notice regarding the end of the relief period. Although this is not an outright mandate, for all practical purposes it is a mandate because any plan that does not send such communications is risking a fiduciary violation.

At the same time, the DOL confirms that the relaxed communication methods of email, text messages, and websites provided in the 2020 Notices remain in effect. Plan sponsors and third party administrators will need to determine how to effectively communicate the end of the relief period to participants, employees and beneficiaries. It is possible to use a number of different communication methods depending on the population.

The DOL's general fiduciary guidance under the 2020 Notices that plan fiduciaries should make

reasonable accommodations to ensure that participants do not suffer losses of benefits or undue delays in payment remains in effect.

In addition, the 2021 Notice affirms that the DOL continues to emphasize compliance assistance in enforcement matters where plan sponsors have acted in good faith and with reasonable diligence under the circumstances.